

***“San Diego’s municipal government has failed its citizens  
and become an embarrassing and corrupt impediment to progress.”<sup>1</sup>***  
**Mayor Jerry Sanders January 12, 2006**

***Corruption: “Impairment of integrity, virtue, or moral principle.”***  
**Webster’s Third International Dictionary<sup>2</sup>**

May 22, 2008

Honorable Edmund G. Brown, Jr.  
Attorney General  
State of California  
P. O. Box 944255  
Sacramento, CA 94244-2550

Dear Honorable Attorney General Edmund G. Brown, Jr.:

## **I. INTRODUCTION**

I am requesting that you correct the May 2008 Report of the California Attorney General entitled: “San Diego City Attorney Michael Aguirre’s Allegations of ‘Corruption’ Against San Diego Mayor Jerry Sanders Regarding the Sunroad Building Project” [Report]. Although the Report is riddled with inaccurate, incomplete, and inconsistent information, this letter addresses only the claims made on pages 20-21 of the Report,<sup>3</sup> which alleged that the City Attorney threatened to call Mayor Jerry Sanders corrupt unless employment positions in the 2008 City Attorney’s budget were preserved. The Report failed to include or even discuss substantial relevant facts which are detailed below.

## **II. THE CLAIMS MADE IN THE REPORT ON PAGES 20-21**

### **A. The Three Conversations**

The Report on pages 20-21 sets forth incomplete, inconsistent and inaccurate information regarding the allegations made in three alleged conversations: (1) one conversation was

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<sup>1</sup> 12 January 2006 Mayor Jerry Sanders State of the City Address pp. 1-3, 12, Exhibit 1.

<sup>2</sup> Webster’s Third International Dictionary p. 512, Exhibit 2.

<sup>3</sup> The City Attorney will be issuing a more extensive report on the entirety of the Report.

alleged to have taken place on March 21, 2007, over the phone between the Mayor and the City Attorney<sup>4</sup>; (2) a second conversation allegedly took place “about the same time” between a representative of the City Attorney’s office and a representative of the Mayor’s office; (3) the third conversation “about the same time” supposedly took place between a representative of the Mayor’s office and a representative of the City Attorney’s office.<sup>5</sup>

The report states in this regard as follows:

[First Conversation Sainz and McGrath]

What was not publicly known was this: In his interview with this office, Fred Sainz stated that about this same time, Executive Assistant City Attorney Donald McGrath met with Fred Sainz of the Mayor’s office. ACA McGrath suggested that City Attorney Aguirre would ‘go easy’ on the Mayor over the Sunroad building matter if the Mayor relented on the ‘supplemental’ deputy positions budget issue. Sainz declined.

[Second Conversation Michell and McGrath]

McGrath also told Mayoral Aide Kris Michell that City Attorney Aguirre would publicly accuse the Mayor of being corrupt in connection with the Sunroad building in the absence of a concession on the plan to cut the 17 ‘supplemental’ deputy city attorney positions.<sup>6</sup>

[Third Conversation Mayor and City Attorney]

Finally, in his statement to this office, Mayor Sanders stated that the city attorney telephoned the Mayor and asked for the budget to preserve the 17 ‘supplemental’ positions. The Mayor said, “No.” The city attorney responded, ‘It’s not going to be pretty,’ and hung up.

The next day, May 23, City Attorney Aguirre made public accusations against the Mayor of corruption in connection with the Sunroad project.<sup>7</sup>  
(emphasis added)

B. Incomplete and Inconsistent Information: Hedgecock Interview

The Report is incomplete in its discussion of the Mayor’s statement about the Third Conversation between the City Attorney and the Mayor. Although the Report links the three conversations, the Mayor did not claim in his statement to the Attorney General, that the City Attorney said anything to him about the word corrupt or even mentioned Sunroad during their telephone conversation [Third Conversation].

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<sup>4</sup> According to the Report the City Attorney had this conversation the day before May 23, 2007, Report p. 21, Exhibit 3.

<sup>5</sup> Attorney General Report p. 21, Exhibit 3.

<sup>6</sup> Attorney General Report p. 21, Exhibit 3.

<sup>7</sup> Attorney General Report pp. 20-21, Exhibit 3.

The Report is also based upon information that is inconsistent with the public record. On June 14, 2007, three weeks after the alleged threats were made to the Mayor's staff the Mayor was asked on live radio if the "charges he's [City Attorney] made of regarding Sunroad are motivated because he didn't get enough lawyers." In his response to this question, the Mayor made no mention of the alleged threat and acknowledged that the City Attorney was motivated by his concern for the Sunroad issue:

RH: Well, I know this this one got very interesting, because whereas in the first part of your term, you and Mike Aguirre were working pretty closely together and I was talking to Kevin Faulconer the other day and he was kind of pining for the time when uh you know you and he and Aguirre were getting things done and working together and it uh it blew up this week uh pretty significantly, over the subject of the Sunroad uh project.

JS: Well you know I I actually think it blew up over the budget. And you know when you make reform everybody's for it until it affects them and when you have to streamline the City and you have to cut staff and you have to make tough decisions, uh everybody's for that unless it affects them. And I I really think this is as much about that issue as anything else. And you you know we cut a lot of employees. I was happy to get the budget signed yesterday. Um, not as many cuts as I had wanted, but I still think it was a good budget with 639 uh positions cut permanently, along with the ones we had last year, adding up to about seven hundred, er 650. Um, so, I, you know, I I understand uh the consternation of the City Attorney over uh not getting additional staff in there. But I think that's got a lot to do with it also.

RH: Okay, so his attack in terms of the charges he's made of regarding Sunroad are motivated because he didn't get enough lawyers.

JS: I think you know, I I I think Mike cares very deeply about the Sunroad issue and I'm not going to try and take that away from him. And I think that's important to acknowledge that. And I will.<sup>8</sup>

This transcript of Roger Hedgecock's interview with Mayor Sanders was available to the Attorney General because it was posted on the City Attorney's website ([www.sandiegocityattorney.org](http://www.sandiegocityattorney.org), under the heading "Just Released Significant Reports and Legal Documents," "Montgomery Field Airport Safety Issues," "City Attorney Memo to Mayor Sanders Re: Sunroad Violates PUC Code Section 21659," p. 29 of 106).

Thus, the Report does not quote Mayor Sanders saying the City Attorney made any threat about using the word "corruption" or even mentioned the word Sunroad during their telephone conversation. Questioned directly, the Mayor stated the City Attorney was

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<sup>8</sup> Transcript KOGO Roger Hedgecock interview of Mayor Jerry Sanders June 14, 2007 4:30 pm, RH refers to Roger Hedgecock, JS refers to Jerry Sanders, pp. 1-10, Exhibit 4.

acting out of his concerns for the Sunroad issue. Again, why the Attorney General's Report ignored these facts is inexplicable.

C. Inaccurate and Inconsistent Information: There Was No May 23, 2007 Accusation of Corruption

The Report claims that the telephone conversation between the City Attorney and the Mayor took place on May 22, 2007 and that the "next day, May 23, City Attorney Aguirre made public accusations against the Mayor of corruption in connection with the Sunroad project."<sup>9</sup>

The claim that the City Attorney made a corruption charge against the Mayor on May 23, 2007, is inaccurate.<sup>10</sup> The Report does not identify where and to whom the alleged corruption accusations were made. Moreover, the time line published with the report does not identify any event at which the City Attorney made accusations against the Mayor on May 23, 2007.<sup>11</sup> In fact, the time line shows no relevant event occurred on May 23, 2007.<sup>12</sup>

The claim that the City Attorney made a corruption charge is inconsistent with the record before the Attorney General. The City Attorney released an extensive report on Sunroad on May 15, 2007. The same day the Mayor's office informed the City Attorney that the Mayor would be cutting the City Attorney's budget. The next day, May 16, 2007, the Mayor's office submitted its budget with the cuts in the City Attorney budget.<sup>13</sup>

On May 22, 2007, a date by which the Report claims the corruption threats were made, the City Attorney held a news conference to inform the public that the Mayor was backtracking on his budget promise to keep the City Attorney positions in tact.<sup>14</sup> The May 22, 2007, City Attorney News Advisory laid out the pertinent events up to May 22, 2007, regarding the dispute over the proposed cuts in the City Attorney's staff.

The News Advisory stated that the City Attorney had learned the Mayor intended to cut the City Attorney's budget late in the afternoon of May 15, 2007. The news advisory also stated that on May 16, 2007, the City Attorney positions had been eliminated from the Mayor's proposed budget:

City Attorney Michael Aguirre will brief the news media about urging Mayor Jerry Sanders to keep his Office's commitment to fund the City

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<sup>9</sup> Attorney General Report pp. 20-21, Exhibit 3.

<sup>10</sup> The claim that the City Attorney and the Mayor spoke about the City Attorney's budget on May 22, 2007 is inaccurate. A telephone conversation between the Mayor and City Attorney took place on May 15, 2007, after Fred Sainz called the City Attorney's office on May 15, 2007 about the budget cuts. The City Attorney returned the call to the Mayor. During this conversation no mention was made of Sunroad or corruption, see May 22, 2007, News Advisory, Exhibit 5.

<sup>11</sup> Attorney General Report, attachment 1 pp. 10-11, Exhibit 3.

<sup>12</sup> Attorney General Report, attachment 1 pp. 10-11, Exhibit 3.

<sup>13</sup> 22 May 2007, News Advisory, Exhibit 5.

<sup>14</sup> 22 May 2007, News Advisory, Exhibit 5.

Attorney's Office at the level publicly stated by the Chief Financial Officer at the City's Budget & Finance Committee meeting of May 7, 2007.

On that day, Jay Goldstone, Chief Financial Officer, told the Committee that a \$1.6 million adjustment in the City Attorney's budget would be supported and funded. That action would save 12.29 attorney positions out of 17 jobs at stake.

However, late in the afternoon of May 15, the City Attorney was made aware by the Mayor's Office that the budget adjustment would not be made. [emphasis added]

The following day, in a May 16, 2007 letter to the Mayor and City Council regarding 'Recommended Revisions to Fiscal Year 2008 Proposed Budget,' Goldstone eliminated the City Attorney's funding adjustment.

Since that time, the City Attorney has met with the Mayor's representatives in an effort to urge the Mayor's Office to keep its promise.

If the City Attorney's budget is not made whole, the resulting loss of positions will have an impact on City services.<sup>15</sup>

At the May 22, 2007 news conference, the City Attorney attributed the Mayor's plan to cut the City Attorney's budget in retaliation for the City Attorney's actions in the Sunroad case. As the Attorney General's report admits, the Mayor immediately responded to the City Attorney's claims of May 22, 2007, in a "Fact Sheet." The immediate response did not include any claim that the City Attorney had made any threats about corruption and Sunroad. Again, the Attorney General failed to discuss why the Mayor's staff did not include the alleged threat in the Fact Sheet they issued on May 22, 2007.

The Attorney General also noted the Mayor "immediately responded" to the City Attorney's claim that the Mayor was not funding the positions in "retaliation for the City Attorney's aggressive posture on Sunroad." The Report offers no explanation for the omission of the threat from the Mayor's Fact Sheet of May 22, 2007. The Report ignores that obvious glaring hole in the story.

The Report ignored other facts that were inconsistent with the claims in the Report. The City Attorney, as made clear in the May 22, 2007, News Advisory, was told the cuts had been made to the City Attorney budget and the Mayor had submitted his budget to the City Council with the cuts to the City Attorney's budget before the City Attorney attended a joint news conference held with the Mayor about Sunroad on May 18, 2007.

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<sup>15</sup> 22 May 2007, City Attorney News Advisory, Exhibit 5.

D. Incomplete and Inconsistent Information: Ted Sexton

There is another example of incomplete and inconsistent information in the Report. On June 6, 2007, the City Attorney's office received a production of documents from the San Diego Airport Authority that included an agreement between the City and the Authority providing for the Authority to lend the City an airport expert.<sup>16</sup>

Although the Mayor disclosed at the May 18, 2007 news conference that he had sent a letter to the Federal Aviation Administration [FAA] earlier that day proposing his plan for the Sunroad building, he did not disclose the arrangement with the Airport Authority nor the role that the Airport Authority executive Ted Sexton was to play in getting the FAA to adopt Sunroad's proposal.<sup>17</sup>

The City Attorney's office scheduled a press conference for June 6, 2007, to disclose the arrangement between the City and the Airport Authority and Mr. Sexton's role, which was scheduled to be held on June 7, 2007.<sup>18</sup> The June 7, 2007, News Advisory advised that the agreement between the City and the Authority had not been presented to the City Attorney as required under Charter § 40:

City Attorney Michael Aguirre will brief the news media about the March 31, 2007 Agreement between the San Diego County Airport-Authority and the City of San Diego for Executive Loan of Services of Airport Authority Employee Theodore (Ted) C. Sexton, which is in violation of Section 40 of the San Diego City Charter.<sup>19</sup>

It was at this news conference on June 7, 2007, that comments were made about corruption in response to a question from a news reporter at the news conference.<sup>20</sup> It was the discovery that the Mayor was using an employee of the Airport Authority to lobby the FAA that prompted the City Attorney to hold the June 7, 2007, news conference.

Fred Sainz, a source of the alleged corruption threat, wrote a contemporaneous June 7, 2007 email to the Voice of San Diego regarding the use of the word corruption at the

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<sup>16</sup> 6 June 2007, letter from the Regional Airport Authority Re: Public Records Request; 31 March 2007 Agreement, Exhibits 6 and 7.

<sup>17</sup> In a March 2, 2007, letter the Mayor asked the Airport Authority Chairman for help with the Sunroad matter. The Mayor referred to the litigation between the City and Sunroad. The Mayor wrote that his office had been "unable to get a clear analysis of whether or not the building is a safety risk to aviation" or whether there may be changes to operations or notices that would eliminate the risk. The Mayor asked if the Airport Authority would assist the City in "analyzing the situation and in working with the FAA and other interested stakeholders in an attempt to resolve this issue" Exhibit 8.

<sup>18</sup> 2 March 2007 letter from Mayor Sanders to Airport Authority Chairman Alan Bersin, Exhibit 8.

<sup>19</sup> 7 June 2007, City Attorney News Advisory, Exhibit 9.

<sup>20</sup> 7 June, 2007, Voice of San Diego report; Voice of San Diego Commentary Aguirre: Mayor Corrupt, Exhibit 10.

press conference. He made no mention of any alleged threat by anyone in the City Attorney's office.<sup>21</sup>

The Mayor was asked about the City Attorney's claim that Ted Sexton was being used to change the flight patterns at Montgomery Field and to allow the Sunroad building to remain at the same height. The Mayor falsely answered "No."<sup>22</sup> This is the exchange:

RH: ... City Attorney is saying that uh you have uh borrowed the services of an executive from the San Diego Airport Authority, one Ted Sexton, and that he is uh trying to discover a way to change the flight patterns of Montgomery Field to allow the too tall building to remain the same height because it's not longer a hazard, is that true?

JS: No, we brought Ted Sexton over on an agreement with the uh Airport Authority where uh he is a loan executive. He is not uh paid a salary by the City of San Diego. He is instead paid by the airport Authority and his job is to evaluate um whether Brown Field and Montgomery Field are being run uh correctly and whether we should be doing it, or whether the Airport Authority should be doing it.<sup>23</sup>

The Report time line states in reference to the Mayor's statement to Roger Hedgecock in an entry entitled: "June 7/14, 2007":

On Roger Hedgecock radio show Mayor Sanders responds to question and says Sexton was not brought in to work on the Sunroad building but corrects that the next week, saying Sainz made error on Fact Sheet.

The grouping of the June 7 and June 14 statements of Mayor Sanders on the time sheet was an improper investigative technique. These events were not simultaneous. The whole reason for doing an investigative chronology is to understand the sequence of events. The statements of June 7 and June 14 should not have been grouped together. Also the characterization that the Mayor "corrects" his June 7, 2007, false statement about Ted Sexton is also not warranted. On June 14, 2007, the Mayor was confronted with documents showing Ted Sexton was in fact working on the Sunroad matter for the City and he then admitted those facts to be true.

On June 12, 2007, the City Attorney released documents showing that Ted Sexton flew to Texas on May 22, 2007, and met with the FAA to request that the flight path modifications be implemented to accommodate Sunroad's 12-story Centrum 1 building, at the height the FAA had deemed to be a hazard. The City Attorney pointed out that as

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<sup>21</sup> 8 June 2007 Voice of San Diego Commentary, Exhibit 11.

<sup>22</sup> Transcript KOGO Roger Hedgecock interview of Mayor Jerry Sanders June 14, 2007 4:30 pm, RH refers to Roger Hedgecock, JS refers to Jerry Sanders, pp. 1-10, Exhibit 4.

<sup>23</sup> Transcript KOGO Roger Hedgecock interview of Mayor Jerry Sanders June 14, 2007 4:30 pm, RH refers to Roger Hedgecock, JS refers to Jerry Sanders, pp. 1-10, Exhibit 4.

late as the prior Thursday, the Mayor had falsely claimed that Ted Sexton “was not brought on board to manage the Sunroad building issue.”<sup>24</sup>

Included in the released documents were two letters showing that Ted Sexton had been brought in to work on the Sunroad matter. The first document was a letter from the Mayor to Alan Bersin, Board Chairman of the San Diego County Regional Airport Authority in which the Mayor asked the Airport Authority to “assist us in analyzing the situation and in working with the FAA and other interested stakeholders” on the Sunroad matter.

A second letter from Chairman Bersin to Mayor Sanders noted that the Mayor’s letter requested “assistance from the San Diego County Regional Airport Authority to help resolve issues surrounding the Sunroad Enterprises building near Montgomery Field.”<sup>25</sup>

Also included in the documents was an email from Ted Sexton to Tom Story, a vice-president with Sunroad’s developer, which included the draft presentation for the FAA regarding the Sunroad building.<sup>26</sup>

Two days after these documents were released showing that the Mayor had not told the truth about Mr. Sexton’s role, the Mayor admitted to Roger Hedgecock that his statement on June 7, 2007, about Ted Sexton was false.

Roger Hedgecock played the June 7, 2007, tape recording of the Mayor’s statement and made mention of the Mayor’s June 2, 2007, letter asking Alan Bersin for help on the Sunroad matter. The Mayor responded, in pertinent part, “You know Roger, I understand exactly what you’re saying. And if I misled you, I’m sorry, because I take this seriously.”<sup>27</sup>

The Mayor went on to provide a longer answer but Roger Hedgecock brought the Mayor back to Sunroad and noted that Alan Bersin had written a letter to the Mayor on March 12, 2007, agreeing to provide help on Sunroad.<sup>28</sup> Again, the Mayor gave a longer answer claiming the information was known to the City Attorney and some was out in the public but then stated: “[I]f I’ve misrepresented it to you, I apologize for that. That’s my fault.”<sup>29</sup>

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<sup>24</sup> 12 June 2007, City Attorney News Release, Exhibit 12.

<sup>25</sup> 12 March 2007, letter from Alan Bersin to Jerry Sanders, Exhibit 13.

<sup>26</sup> 21 May 2007, Email from Ted Sexton to Tom Story, Exhibit 14.

<sup>27</sup> Transcript KOGO Roger Hedgecock interview of Mayor Jerry Sanders June 14, 2007 4:30 pm, RH refers to Roger Hedgecock, JS refers to Jerry Sanders, pp. 1-10, Exhibit 4.

<sup>28</sup> Transcript KOGO Roger Hedgecock interview of Mayor Jerry Sanders June 14, 2007 4:30 pm, RH refers to Roger Hedgecock, JS refers to Jerry Sanders, pp. 1-10, Exhibit 4.

<sup>29</sup> Transcript KOGO Roger Hedgecock interview of Mayor Jerry Sanders June 14, 2007 4:30 pm, RH refers to Roger Hedgecock, JS refers to Jerry Sanders, pp. 1-10, Exhibit 4.



May 22, 2008

E. Inconsistent Information: Mayor's Sunroad Report

Finally, there is another glaring inconsistency between the Attorney General Report and the Mayor's own Sunroad report issued on July 19, 2007.<sup>30</sup> The Mayor's report makes no mention of any threat by the City Attorney or any City Attorney staff member. The Attorney General's report offers no explanation why the alleged threats were not included in the Mayor's report on the Sunroad matter. The City Attorney stood next to the Mayor at the July 19, 2007, release of the Mayor's Sunroad report, and again, no mention of any threat was made at the news conference.

**III.  
CONCLUSION**

The Report is based upon inaccurate, incomplete, and inconsistent information as set forth above.

I respectfully submit that you have been misinformed about this matter and request an opportunity to meet with you and your staff who participated in the preparation of the report at your earliest convenience.

Dated: 22 May 2008



Michael J. Aguirre  
San Diego City Attorney

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<sup>30</sup> 19 July 2007, Mayor Report on Sunroad, Exhibit 15.